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**UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION**

**Docket No. 13-29
MATTHEW VALENTINE/LIAR CATCHERS
ORDER**

On April 5, 2013, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Matthew Valentine (hereinafter, Applicant), of Lexington, Kentucky. The Show Cause Order proposed the denial of Applicant's pending application for a DEA Certificate of Registration as a Researcher, which would authorize Applicant to possess and use controlled substances as a canine handler, on the ground that his registration would be inconsistent with the public interest. GX 1, at 1 (citing 21 U.S.C. § 823(f)).

On April 29, 2013, Applicant, acting *pro se*, filed a request for a hearing with the DEA Office of Administrative Law Judges. GX 2. After the matter was assigned to an Administrative Law Judge (ALJ), Applicant submitted a letter in which he requested to withdraw his application. GX 3. Therein, Applicant stated that he was "not in a position to fight this legal battle at this time." *Id.* A few weeks later, Applicant requested a stay until May 31, 2013, *see* GX 4, which was granted by the ALJ. *See* GX 5.

Upon presentation of Applicant's withdrawal request to the Office of Diversion Control (OD), the latter advised Government Counsel that it would accept the request only if Applicant agreed not to reapply for three years. Request for Final Agency Action, at 3. Applicant rejected OD's offer. *Id.* Thereafter, OD made a subsequent offer that would have allowed Applicant to withdraw if he agreed not to reapply for two years. *Id.* Applicant also rejected this offer. *Id.*

According to Government Counsel, on May 22, 2012, OD, “without providing a basis for its decision,” notified the former that it had rejected Applicant’s withdrawal request and “instructed Chief Counsel to take the matter to hearing.” *Id.* The next day, Government Counsel notified the ALJ of OD’s decision. The ALJ then vacated the stay and set the matter for hearing. GX 7, at 1-2.

On May 29, 2013, Applicant submitted a request to waive his right to a hearing and submitted various documents in support of his application. GX 8. The ALJ then ordered that the proceeding be terminated. GX 9. Thereafter, on October 29, 2013, the Government submitted a Request for Final Agency Action. Req. for Final Agency Action, at 15. Therein, the Government sought the denial of Applicant’s application. *Id.* at 1.

Upon review, the then-Administrator denied the Government’s request. Order of the Administrator, at 3 (May 2, 2015) (hereinafter, Order). The then-Administrator specifically explained that under a DEA regulation, “[a]n application may be amended or withdrawn with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.” *Id.* at 2 (quoting 21 CFR 1301.16(a)). The then-Administrator also relied on section 555(e) of the Administrative Procedure Act, which provides that:

Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceedings. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

5 U.S.C. § 555(e) (quoted in Order, at 2).

Based on the plain language of section 555(e), the then-Administrator held that Applicant’s withdrawal request clearly was a “request of an interested person made in

connection with [an] agency proceeding.” Order, at 2. She further noted that the grounds for denying Applicant’s withdrawal request were not “self-explanatory,” and were, in fact, “totally unknown.” *Id.* Accordingly, the then-Administrator held that the Office of Diversion Control was required to provide Applicant with a “notice,” which was “accompanied by a brief statement of the grounds for denial” of his withdrawal request. *Id.* at 3 (quoting 5 U.S.C. § 555(e)).

Because the Office of Diversion Control had not complied with section 555(e), the then-Administrator denied the Government’s Request for Final Agency Action. *Id.* The then-Administrator returned the record to the Government’s Counsel, with the instruction that its Request should not be re-submitted until such time as the Office of Diversion Control complied with 5 U.S.C. § 555(e) and explained why Applicant has not demonstrated good cause to withdraw his application, as well as why the withdrawal is not in the public interest. *Id.*

On August 7, 2015, Government Counsel filed a Request for Dismissal of Order to Show Cause. Therein, Government Counsel represents that on July 30, 2015, the Office of Diversion Control had decided to allow Respondent to withdraw his application. The Government therefore requests an Order dismissing the Show Cause Order.

Because the Office of Diversion Control has granted Respondent’s withdrawal request, there is no longer an application to act upon and the case is now moot. *See Thomas E. Mitchell*, 76 FR 20032, 20033 (2011). Accordingly, I grant the Government’s Request and dismiss the Order to Show Cause.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. § 823(f), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Matthew Valentine/Liar Catchers be, and it hereby is, dismissed. This Order is effective immediately.

Dated: August 10, 2015

Chuck Rosenberg
Acting-Administrator

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